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Legally Speaking - Judge & Priestley's Quarterly Legal Update for Private Clients

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Welcome to J & P's latest newsletter, specially designed to keep you up to date with all the latest legal developments affecting you and your family.

Got something on your mind? ... give us a call or email us.

For more than 125 years we have been providing clients with expert and professional legal advice. We understand the value of a personal and friendly service.

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New Government guide on selling your home

The government has issued a new set of guidelines to help people preparing to sell their home.

The document, How to Sell, was produced by the Ministry of Housing, Communities and Local Government, and covers everything from ensuring your home has 'kerb appeal' to making sure you get good legal advice from a qualified solicitor.

People who haven't sold a property for many years may notice some changes. For example, the law requires professionals like estate agents and mortgage lenders to carry out ID checks on you to protect against money laundering.

The document lists some of the paperwork you will need to complete a sale. Your solicitor will be able to help you make sure they are in order. They include:

- HM Land Registry title documents
- gas and electrical checks
- planning permission for any major work carried out
- building regulation completion

Judge & Priestley Bolsters Its Private Client Team

The Private Client team at Judge & Priestley continues to grow and expand its fields of expertise, with the addition of a specialist Contentious Probate Solicitor.

Nasima Ansary has joined the team to help advise clients on deceased estates, where there may be a dispute over the Will, the appropriate person to administer the estate, or who is to inherit under a Will or intestacy.

Her aim in contentious probate matters, is always to try and bring about a timely resolution, whilst limiting the impact on both the parties and the assets involved as much as possible. If you have a dispute over a Will, Nasima can help guide you through this important and complex field of law, to help give you peace of mind and assist your loved-ones through at difficult times.

PRIVATE LANDLORDS FREE LEGAL CLINIC

WEDNESDAY 27 NOVEMBER

BECKENHAM OFFICE 17:00 – 19:00

Are you faced with a problem? From rent arrears to wanting to evict a tenant ... Judge & Priestley are offering free legal advice at their monthly legal clinics.

The next one is on Wednesday 27 November by appointment only.

Please call Nita Newsome on 0208 290 7425
or email nnewsome@judge-priestley.co.uk

- certificates and builder's guarantee certificates for alterations or additions
- if your home is in a conservation area, conservation area consent for works

The guide covers selling both leasehold and freehold properties and gives some useful advice. For example, it points out that if you are selling a house where the lease has less than 80 years to run, you may need to extend the lease before you sell. This is because some lenders are reluctant to provide mortgages for properties with less than 80 years remaining. Sellers are also urged to

select a good solicitor before they put their home on the market as this will reduce the risk of delays and other difficulties.

The guide points out that selling a property involves the transfer of large sums of money so can attract the attention of criminals and financial scammers. Good legal representation can help protect you.

For more details contact
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David Chandra, Head of Private Client Team, commented "Inevitably with the rising value of many estates and increasing complexity of many modern family set-ups, we have been getting more enquiries relating to contested Wills and Probate matters. We have therefore been looking to supplement our existing expertise in this area." He added "Nasima has over 15 years' experience, with a particular focus on estate disputes. The skills she brings complement the wealth of

experience already held in our private client team, which is accredited for Wills & Inheritance Quality by the Law Society, and includes three qualified STEP (Society of Trust and Estate Practitioners) members."

Judge & Priestley has the largest and most experienced Private Client team in the Bromley, Beckenham and Chislehurst area, which can assist with all related matters including:

- Probate administration
- Will drafting
- Estate and inheritance planning
- Contested wills and probate
- Lasting Powers of Attorney
- Planning for nursing home and care fees
- Deputyships
- Mental capacity and Court of Protection issues

New moves to improve parental leave rights

The government has launched a consultation on how to ensure greater equality in parental leave entitlements.

The consultation will ask whether statutory paternity leave for fathers and same sex partners should be changed, and for suggestions on ways in which the shared parental leave policy introduced in 2015 could be improved.

The government is looking to introduce a new Neonatal Leave and Pay entitlement for parents of premature and sick babies who need to spend a prolonged period in neonatal care following birth.

Parents would receive one week of Neonatal Leave and Pay for every week that their baby is in hospital. This would be available to mothers, fathers and partners.

The new entitlement would mean that fathers and partners will no longer need

to rely on taking annual and unpaid leave if their child is in hospital for longer than their paternity leave period.

In the UK, an estimated 100,000 babies are admitted to neonatal care every year following their birth. For fathers and partners, typically their whole 2 weeks of paternity leave is spent with the mother and baby in hospital.

Where a baby is kept in neonatal care for longer than 2 weeks, a Bliss survey found that around 36% of fathers and partners are signed off sick.

A government spokesperson said: "Parents have more than enough on their plates without worrying about their



parental leave running out and having to return to work before their precious new born comes home."

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The potential pitfalls of making a Will after remarrying – and how you can avoid them

When a married couple makes mirror Wills, they usually follow a simple formula – everything is left to each other when the first spouse dies, then passes to the children on the second death. This is an efficient and proven structure when all children are from the same relationship.

But is this the case when couples have children from previous marriages?

The standard mirror Will structure is problematic for a number of reasons when each spouse intends to benefit different people, as they may if they have children from previous marriages.

The largest issue is that all assets pass to the surviving spouse outright on the first death. This means that the spouse who dies first will not be able to guarantee their children will inherit, as the survivor will be fully entitled to leave all assets to their children only.

Even if both Wills included legacies for both sets of children, the surviving spouse can change their Will to exclude their spouse's children after their death or even to leave the estate to another partner if they remarry – meaning the spouse who died first could effectively be leaving everything to people they have never met.

This can create uncertainty and make inheritance a lottery, as who will inherit

depends entirely on which spouse passes away first.

In other words, the salient issue is the lack of asset preservation and protection for the spouse who passes away first. So how is this issue avoided?

A common solution to this issue is to incorporate a trust structure in both Wills known as a life interest trust. The Wills work as follows: rather than passing outright to the surviving spouse, all assets are left in a life interest trust for their benefit. This means the surviving spouse does not own the assets – the trust does. The assets will pass outright to the children on the second death.

The surviving spouse is left a 'life interest' in the estate, allowing them to continue to live in the matrimonial home and take any income generated by the assets passing under the Will whilst they are alive – but the capital value is preserved for the testators' children. This means that each spouse's assets are guaranteed to benefit their respective children without cutting each other out of the Will entirely.

A life interest trust is also rather flexible. Powers can be granted to trustees that allow them to appoint trust capital to the children if it is necessary to do so. This means assets can be given straight to children if they need it (such as in the event of a divorce). Without a life interest

trust, the assets would be owned by the surviving spouse, who would not be obligated to provide any financial support to the children.

A life interest trust Will can also result in reduced care fees for the surviving spouse. As the assets from the first spouse's death belong to the trust rather than the survivor, they cannot usually be considered in financial care assessments. There is no guarantee this mechanism will work in the future as legislation may change, but life interest trusts are currently effective for this purpose.

In summation, if you and your spouse intend to benefit each other with your Wills but are concerned that you wish to benefit separate people after you have both passed away, a life interest trust is an excellent way to guarantee your assets are protected and preserved whilst ensuring the survivor is provided for when they are alive.

The information contained in this article is not to be construed as a substitute for legal advice. We recommend that you consult an experienced solicitor before proceeding.

Edited by Sam McNally and David P Chandra

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Over 90% approval for online probate service

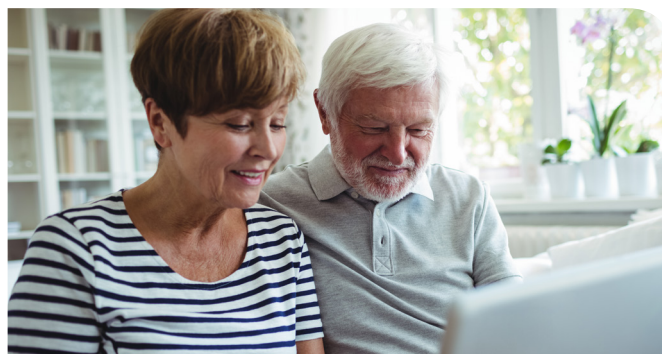
The new digital service for grant of probate applications has achieved a 92% satisfaction rating in its first 12 months, according to HM Courts and Tribunal Service.

The service was introduced in July last year to streamline applications by dealing with them centrally at the Birmingham Courts and Tribunal Service Centre. It's part of a £1 billion reform package for our courts and tribunal services.

Probate is the process by which a person's estate is administered after they die. It is usually carried out by a spouse, a son or daughter or a close relative with the help of a solicitor. It's a very important role because everything has to be done according to the law and in accordance with the wishes of the deceased.

There are several factors to consider such as did the deceased make a will. There are slightly different approaches depending on whether there is will or not.

In most cases, probate or letters of administration will be needed unless the estate is worth less than £15,000 or if it's jointly owned and passing to a spouse. Your solicitor will be able to provide advice on these matters.



As well as ensuring the deceased's wishes are carried out, probate will also involve calculating how much their estate is worth and whether there is any inheritance tax to pay.

You may face a penalty if your information about the estate's Inheritance Tax liability is inaccurate. If tax is due on the estate, you will usually have to pay at least some of it before probate is granted.

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Help to Buy scheme to start allowing 35-year mortgages

Homeowners buying a property under Help to Buy are now allowed to take out 35-year mortgages.

The government has moved to close what it describes as a loophole, which has seen purchasers using the scheme facing difficulties and uncertainty if they wanted to take out a mortgage with a term of more than 25 years.

Under the changes, which are taking effect immediately, people will have the freedom to reduce their monthly mortgage repayments by spreading their borrowing over a longer period.

The move reflects change in the wider mortgage market, where the number of



first-time buyers taking out a mortgage of more than 30 years has doubled in the last decade.

At present, when re-mortgaging after 2 or 5 years at the end of a fixed rate

period, Help to Buy homeowners cannot in practice take out a mortgage that goes on for more than 25 years after the original property purchase date.

This policy change opens the Help to Buy re-mortgage market for more lenders, giving customers more choice – potentially paving the way to more competitive deals.

Help to Buy schemes have been used more than 500,000 times by families taking their first step on to the property ladder.

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Divorcing husband avoids quick sale of firm's shares

A wife has failed in her attempt to force the immediate sale of her former husband's company shares as the High Court ruled it "was not a propitious time to sell".

It held that it was not unreasonable of the husband to want to wait until the timing was right to get the best return.

The wife had applied for financial remedy orders after the seven-year marriage broke down.

She was from a wealthy family and the couple had two homes that had been bought with the help of her father over a period of time.

The wife had a number of shareholdings in companies operated by her father and was the beneficiary of several family trusts.

The husband owned 50% of his trading company and earned £619,000 net per year.

There was a dispute over how much the business was worth, with various reports valuing it between £48.9m and £77.3m. The wife submitted that the husband's business should be sold so the proceeds could be split 50-50.

The husband wanted to wait until he had realised his interests in the company

over a five-year period to maximise its true potential value.

The court heard that the business had just recorded its two worst years. It didn't order an immediate sale as it was not a propitious time to sell and the husband would have to bear a substantial discount on the value of his shares.

Instead, he was ordered to pay a lump sum of £8.9m as well as periodical payments of £50,000 per annum.

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Review aims to improve child protection in courts

The government has launched a review on how the family courts protect children and parents in cases of domestic abuse and other serious offences.

It aims to ensure that the family court works first and foremost in the explicit interests of the child, including their safety, health and well-being.

The move follows responses received through the government's domestic abuse consultation in which concerns were raised around the family courts' response to potential harm to children and victims.

In addition to calls for better protections for children, some claim that domestic abusers are using the court system to re-traumatise their victims.

A government spokesperson said: "Some of the most vulnerable in our society



come before the family courts, and we are determined that we offer them every protection."

Specifically, the review will:

- examine the courts' application of Practice Direction 12J – this relates to child arrangement cases involving domestic abuse

- examine the courts' application of 'barring orders' which prevent further applications being made without leave of the court under the Children Act 1989

- gather evidence of the impact on the child and victim where child contact is sought by someone alleged to have, or who has, committed domestic abuse or other relevant offences.

The panel will consider how the family courts handle a range of offences including rape, child abuse, assault, sexual assault, murder and other violent crime, with the government committed to ensuring the right protections are in place for victims and their children.

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Banker sues ex-wife after she refuses to leave his home

A banker is suing his ex-wife for £500,000 after she refused to move out of their marital home.

Kerim Derhalli says that his ex-wife Jayne Richardson Derhalli had been 'trespassing' at the £6m property.

When the couple divorced, they agreed a 'clean break' consent order to divide the family wealth. This saw Mrs Richardson Derhalli awarded an £11.5m settlement.

She had received an initial £6.5m and was due a further £5m when the house in Kensington was eventually sold. However, they were unable to

sell the property for their asking price of just over £8m.

Mrs Richardson Derhalli continued to live there, which led to Mr Derhalli telling her to "vacate the property within four weeks or pay rent."

However, she argued she had the right to stay without paying rent until it was sold. She continued to live there for nearly three years until the house was eventually sold for just under £6m.

Mr Derhalli then claimed £500,000 in rent for the three years that his ex-wife had lived in the property. The

judge ruled in his favour but added that the amount owing to him must be decided at a future hearing.

He said: "Mr Derhalli was entitled to determine the licence to occupy with reasonable notice.

"It follows that Mrs Richardson Derhalli could be considered a trespasser from April 21, 2017, since when she remains liable to pay for the use and occupation of the property."

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This newsletter is intended merely to alert readers to legal developments as they arise. The articles are not intended to be a definitive analysis of current law and professional legal advice should always be taken before pursuing any course of action.

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